

# Exhibit



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FILED, ORANGE COUNTY CLERK 02/09/2018 11:39 AM

NYSCEF DOC. NO. 1

INDEX NO. EF001665-2018

RECEIVED NYSCEF: 02/09/2018

Date of Filing:

Index #:

Plaintiff designates  
Orange County  
as the place of trial.

The basis of venue is the  
Plaintiff's residence address.

Plaintiff resides at  
80 Grand Ave.  
Middletown NY 10940

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

JACELL GIBSON,

Plaintiff,

SUMMONS

-against-

SAM'S CLUB STORE #6423 and  
SAM'S EAST, INC.,

Defendants.

To the above-named defendants:

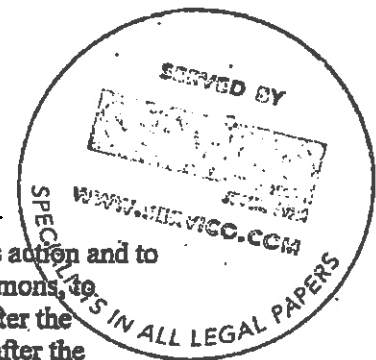
YOU ARE HEREBY SUMMONED, to answer the complaint in this action and to  
serve a copy of your answer, or, if the complaint is not served with this summons, to  
serve a notice of appearance, on the plaintiff's attorneys within - 20- days after the  
service of this summons, exclusive of the day of service (or within 30 days after the  
service is complete if this summons is not personally delivered to you within the State of  
New York); and in case of your failure to appear or answer, judgment will be taken  
against you by default for the relief demanded in the complaint.

SOBO & SOBO, LLP

*Alexander W. Tesoriero*  
Alexander Tesoriero, ESQ.  
Attorneys for Plaintiff  
One Dolson Avenue  
Middletown, NY 10940  
(845) 343-0466

Dated: February 8<sup>th</sup>, 2018  
Middletown, New York

Defendants' addresses: See Complaint



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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

-----X  
JACELL GIBSON,

Plaintiff,

VERIFIED  
COMPLAINT

-against-

Index No.:

SAM'S CLUB STORE #6423 and  
SAM'S EAST, INC.,

Defendants.  
-----X

Plaintiff, JACELL GIBSON, by her attorneys, SOBO & SOBO, L.L.P., as and for the Verified Complaint, herein alleges the following:

1. That at all times hereinafter mentioned, the plaintiff was and still is a resident of the County of Orange, State of New York.
2. That at all times hereinafter mentioned, upon information and belief, the defendant, SAM'S CLUB STORE #6423, was and still is a domestic corporation organized and existing under and by virtue of the Laws of the State of New York.
3. That at all times hereinafter mentioned, upon information and belief, the defendant, SAM'S CLUB STORE #6423, was and still is a foreign corporation duly authorized to do business within the State of New York.
4. That at all times hereinafter mentioned, upon information and belief, the defendant, SAM'S CLUB STORE #6423, was and still is a business entity doing business within the State of New York.

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5. That at all times hereinafter mentioned, upon information and belief, the defendant, SAM'S EAST, INC., was and still is a domestic corporation organized and existing under and by virtue of the Laws of the State of New York.

6. That at all times hereinafter mentioned, upon information and belief, the defendant, SAM'S EAST, INC., was and still is a foreign corporation doing business within the State of New York.

7. That at all times hereinafter mentioned, upon information and belief, the defendant, SAM'S EAST, INC., was and still is a business entity doing business within the State of New York.

8. That at all times hereinafter mentioned, upon information and belief, the defendant, SAM'S CLUB STORE #6423, was the owner of a certain premises located at 300 North Galleria Drive, Middletown, New York, County of Orange, State of New York, known as "Sam's Club."

9. That at all times hereinafter mentioned, upon information and belief, the defendant, SAM'S CLUB STORE #6423, maintained the aforesaid premises.

10. That at all times hereinafter mentioned, upon information and belief, the defendant, SAM'S CLUB STORE #6423, managed the aforesaid premises.

11. That at all times hereinafter mentioned, upon information and belief, the defendant, SAM'S CLUB STORE #6423, controlled the aforesaid premises.

12. That at all times hereinafter mentioned, upon information and belief, the defendant, SAM'S CLUB STORE #6423, operated the aforesaid premises.

13. That at all times hereinafter mentioned, upon information and belief, the defendant, SAM'S CLUB STORE #6423, was the lessee of the aforesaid premises.

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14. That at all times hereinafter mentioned, upon information and belief, the defendant, SAM'S CLUB STORE #6423, was the lessor of the aforesaid premises.

15. That at all times hereinafter mentioned, upon information and belief, the defendant, SAM'S EAST, INC., was the owner of certain premises located at 300 North Galleria Drive, Middletown, New York, County of Orange, State of New York, known as "Sam's Club."

16. That at all times hereinafter mentioned, upon information and belief, the defendant, SAM'S EAST, INC., maintained the aforesaid premises.

17. That at all times hereinafter mentioned, upon information and belief, the defendant, SAM'S EAST, INC., managed the aforesaid premises.

18. That at all times hereinafter mentioned, upon information and belief, the defendant, SAM'S EAST, INC., controlled the aforesaid premises.

19. That at all times hereinafter mentioned, upon information and belief, the defendant, SAM'S EAST, INC., operated the aforesaid premises.

20. That at all times hereinafter mentioned, upon information and belief, the defendant, SAM'S EAST, INC., was the lessee of the aforesaid premises.

21. That at all times hereinafter mentioned, upon information and belief, the defendant, SAM'S EAST, INC., was the lessor of the aforesaid premises.

22. That at all times hereinafter mentioned, the floor, located on the aforesaid premises was the situs of the within accident.

23. That on or about the 25<sup>th</sup> day of November, 2015, while this plaintiff was lawfully upon the aforesaid premises, she was caused to be precipitated to the ground, thereby sustaining severe and serious personal injuries.

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24. The negligent, wanton, reckless and careless acts of the defendants, their agents, servants and/or employees were a cause of the accident and resultant injuries.

25. That the defendants, their agents, servants and/or employees were negligent, wanton, reckless and careless in, among other things, allowing, causing and/or permitting dangerous, hazardous, slippery and/or unsafe conditions to exist on the aforesaid premises; in acting with reckless disregard for the safety of others, and the defendants, their agents, servants and/or employees were in other ways negligent, wanton, reckless and careless.

26. That the defendants, their agents, servants and/or employees had actual and/or constructive notice of the dangerous and/or defective conditions in that the conditions existed for a sufficient length of time prior to the happening of the incident and in the exercise of reasonable care, the defendants could have and should have had knowledge and notice thereof and further, the defendants, their agents, servants and/or employees created said condition.

27. The limited liability provisions of CPLR 1601 do not apply pursuant to the exceptions of CPLR 1602, including, but not limited to, 1602(2)(iv), 1602(7) and 1602(11).

28. That by reason of the foregoing, this plaintiff was caused to sustain severe and serious personal injuries to her mind and body, some of which, upon information and belief, are permanent with permanent effects of pain, disability, disfigurement and loss of body function. Further, this plaintiff was caused to expend and become obligated for diverse sums of money for the purpose of obtaining medical care and/or cure in an effort to alleviate the suffering and ills sustained as a result of this accident; the plaintiff further

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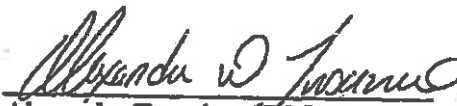
was caused to lose substantial periods of time from her normal vocation and activities, and upon information and belief, may continue in that way into the future and suffer similar losses.

29. That by reason of the foregoing, this plaintiff has been damaged in a sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this matter.

WHEREFORE, plaintiff demands judgment against the defendants, and each of them, as follows:

A sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction in this matter, together with the costs and disbursements of this action.

DATED: February 8<sup>th</sup>, 2018  
Middletown, New York

  
Alexander Tesoriero, ESQ.  
SOBO & SOBO, LLP  
Attorneys for Plaintiff  
One Dolson Avenue  
Middletown, NY 10940  
(845) 343-7626

TO: SAM'S CLUB STORE #6423  
C/O DEFENDANT IN PERSON  
300 NORTH GALLERIA DRIVE  
MIDDLETOWN, NY 10941

SAM'S EAST, INC.,  
C/O SECRETARY OF STATE  
ALBANY, NY 12260

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VERIFICATION

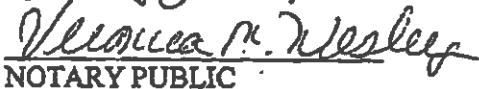
STATE OF NEW YORK, COUNTY OF ORANGE ss:

JACELL GIBSON, being duly sworn says; I am the plaintiff in the action herein; I have read the annexed Verified Complaint, know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

  
JACELL GIBSON

Sworn to before me on this

8<sup>th</sup> day of February 2018

  
NOTARY PUBLIC

VERONICA M. WESLEY  
Notary Public, State of New York  
Qualified in Orange County  
Registration No. 01WE6075427/P  
Commission Expires June 3, 20\_\_

013360109



573



201802210 631

WM 18-152 PO  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

-----X  
JACELL GIBSON,

Index No.: EF001665/18

Plaintiff,

-against-

**VERIFIED ANSWER**

SAM'S CLUB STORE #6423 and SAM'S EAST, INC.,

Defendants.  
-----X

The defendant, SAM'S EAST, INC. i/s/h/a "SAM'S CLUB STORE #6423 and SAM'S EAST, INC.", by its attorneys, BRODY, O'CONNOR & O'CONNOR, ESQS., answering the Verified Complaint herein states upon information and belief:

FIRST: Defendant denies having knowledge or information sufficient to form a belief as to the allegations set forth in paragraph marked "1", and each and every part thereof.

SECOND: Defendant denies the allegations set forth in paragraphs marked "2", "3", "4", "5", "6", and "7", except admits that SAM'S EAST, INC. is a foreign corporation registered to do and doing business in the State of New York.

THIRD: Defendant denies the allegations set forth in paragraphs marked "8", "9", "10", "11", "12", "13", "14", "15", "16", "17", "18", "19", "20", and "21", except admits that SAM'S EAST, INC. is a sublessee of the premises and is the operator of the Middletown Sam's Club, leaving all other questions to the court.

FOURTH: Defendant denies having knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs marked "22", and "23", and each and every part thereof.

FIFTH: Defendant denies the allegations set forth in paragraphs marked "24", "25", and "26", and each and every part thereof.

SIXTH: Defendant denies the allegations set forth in paragraph marked "27", and respectfully refers all questions of law to the trial Court.

SEVENTH: Defendant denies having knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs marked "28", and "29", and each and every part thereof.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

EIGHTH: The plaintiff was guilty of culpable conduct, including contributory negligence and/or assumption of risk, and should an award be made to plaintiff, same should be diminished in the proportion which the culpable conduct and/or contributory negligence and/or assumption of risk attributable to the plaintiff bears to the culpable conduct and/or negligence which caused the damages.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

NINTH: In the event that plaintiff recovers judgment against this answering defendant and it is determined that plaintiff's damages were caused in whole or in part by two or more joint tortfeasors, then defendant's liability herein for non-economic loss may not exceed its equitable share of said damages in accordance with its relative culpability, as provided by Section 1601 of the CPLR.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

TENTH: Plaintiff's recovery, if any, shall be reduced by the amount of any collateral payments received, in accordance with CPLR Section 4545.


WHEREFORE, defendant, SAM'S EAST, INC. i/s/h/a "SAM'S CLUB STORE #6423 and SAM'S EAST, INC., requests judgment dismissing the Complaint herein, together with costs and disbursements of this action.

Dated: Northport, New York  
March 2, 2018

Yours, etc.

BRODY, O'CONNOR & O'CONNOR, ESQS.  
Attorneys for Defendant

By:

  
\_\_\_\_\_  
PATRICIA A. O'CONNOR  
7 Bayview Avenue  
Northport, New York 11768  
(631) 261-7778  
File No.: WM 18-152 PO

TO: SOBO & SOBO, LLP  
Attorneys for Plaintiff  
One Dolson Avenue  
Middletown, New York 10940  
(845) 343-0466

**AFFIRMATION BY ATTORNEY**

The undersigned, an attorney admitted to practice in the Courts of the State of New York, shows:

That affirmant is the attorney for the defendant in the within action; that affirmant has read the foregoing Verified Answer and knows the contents thereof; that the same is true to the affirmant's knowledge, except as to the matters therein stated to be alleged on information and belief; and that as to those matters, affirmant believes it to be true.

Affirmant further says that the reason this Verification is made by deponent and not by the defendant is that defendant is a foreign corporation.

The grounds of belief as to all matters not stated upon deponent's knowledge are documents, correspondence and records maintained in your deponent's files and conversations and conferences had with the defendant.

The undersigned affirms that the foregoing statements are true under the penalties of perjury.

Dated: Northport, New York  
March 2, 2018

  
\_\_\_\_\_  
PATRICIA A. O'CONNOR

AFFIDAVIT OF MAILING

STATE OF NEW YORK     )  
                                      ) ss:  
COUNTY OF SUFFOLK    )

DEBRA SANACORA, being duly sworn, deposes and says:

That your deponent is not a party to this action, is over 18 years of age and resides at Ronkonkoma, New York.

That on the 5<sup>th</sup> day of March, 2018, deponent served the within VERIFIED ANSWER and AFFIRMATION BY ATTORNEY

UPON:

SOBO & SOBO, LLP  
Attorneys for Plaintiff  
One Dolson Avenue  
Middletown, New York 10940  
(845) 343-0466

The address designated by said attorney for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.

  
DEBRA SANACORA

Sworn to before me this  
5<sup>th</sup> day of March, 2018.

  
NOTARY PUBLIC

PATRICIA A. O'CONNOR  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 02OC6028806  
Qualified in Suffolk County  
My Commission Expires 06-06-18

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Year 20

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

JACELL GIBSON,

Plaintiff,

-against-

SAM'S CLUB STORE #6423 and SAM'S EAST, INC.,

Defendants.

## VERIFIED ANSWER and AFFIRMATION BY ATTORNEY

BRODY, O'CONNOR &amp; O'CONNOR, ESQS.

Attorneys for

Defendant/SAM'S EAST, INC.

7 BAYVIEW AVENUE

NORTHPORT, NEW YORK 11768

(631) 261-7778

FAX (631) 261-6411

Pursuant to 22 NYCRR 130-1.1-a, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, (1) the contentions contained in the annexed document are not frivolous and that (2) if the annexed document is an initiating pleading, (i) the matter was not obtained through illegal conduct, or that if it was, the attorney or other persons responsible for the illegal conduct are not participating in the matter or sharing in any fee earned therefrom and that (ii) if the matter involves potential claims for personal injury or wrongful death, the matter was not obtained in violation of 22 NYCRR 1200.41-a.

Dated: .....

Signature .....

Print Signer's Name .....

Service of a copy of the within

is hereby admitted.

Dated: .....

Attorney(s) for .....

## PLEASE TAKE NOTICE

Check Applicable Box

NOTICE OF  
ENTRYthat the within is a (certified) true copy of a  
entered in the office of the clerk of the within-named Court on

20

NOTICE OF  
SETTLEMENTthat an Order of which the within is a true copy will be presented for settlement to the  
Hon. one of the judges of the within-named Court,  
at  
on

20

, at

M.

Dated: .....

BRODY, O'CONNOR &amp; O'CONNOR, ESQS.

Attorneys for .....